

III. REMARKS

This amendment is being submitted in response to the non-final Office Action mailed on December 14, 2004. In this Office Action, claims 1-12 of the above-referenced application are pending and claims 1-12 stand as rejected by the Patent Office. In response to this Office Action, claims 1-2 and 4-7 have been amended to better define the invention and claims 3 and 8-12 have been canceled without prejudice. The amendments made herein are consistent with the application as originally filed and no new matter has been added. The Applicant respectfully requests reconsideration of the pending claims in light of the claim amendments and remarks made in this Amendment and Response.

35 U.S.C. § 112

Claim 7 has been amended to remove the problematic language and claim 8 has been canceled. Claims 5 and 7 have been amended to remove the trademark/trade name VELCRO and claim 10 has been canceled.

35 U.S.C. § 102(b)

On page 3 of the Office Action of December 14, 2004, the Patent Office indicated that claims 1 and 4-12 are anticipated under 35 U.S.C. § 102(b) by Romo et al. (U.S. Patent No. 3,818,509). In response, Independent claim 1 has been amended to include the limitation of a T-shaped piece of resilient material of predetermined length that includes an elongated portion and a crossbar portion. Furthermore, claim 1 has also been amended to include the limitations of a first attachment member on the elongated portion and second and third attachment members on the crossbar portion. As provided by MPEP 2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Furthermore, the elements must be arranged as required by the claim. Thus, because Romo et al. do not teach the use of a T-shaped device that attaches to the helmet and to the left and right sides of the shoulder pads, the Applicant asserts that this patent reference does not anticipate the claimed invention under 35 U.S.C. § 102(b). Claims 4-7 depend from claim 1, and given the amendments to claim 1, are believed to define patentably over the cited art. Claims 8-

12 have been canceled, thereby rendering moot any further discussion thereof under 35 U.S.C. § 102(b).

35 U.S.C. § 103(a)

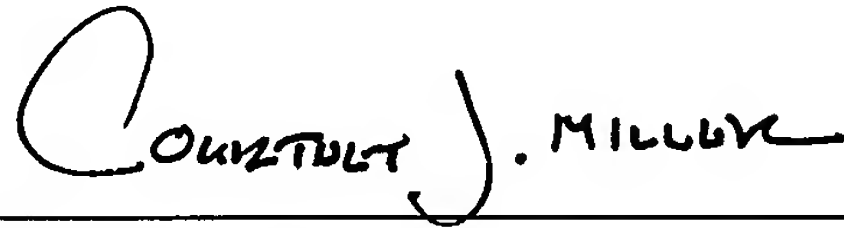
In the Office Action of December 14, 2004, the Patent Office indicated that claims 2 and 3 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Romo et al. (U.S. Patent No. 3,818,509) in view of Newman (U.S. Pat. No. 4,219,193). Likewise claims 7 and 8 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Romo et al. in view of Betts. MPEP 2142 provides that to establish a *prima facie* case of obviousness, three basic criteria must be met: (i) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the teachings; (ii) there must be a reasonable expectation of success; and (iii) the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and must not be based on the Applicant's disclosure.

The Applicant asserts that because the device taught by Romo et al. and the device taught by Newman are constructed by entirely different means and are for different purposes, i.e., one prevents forward motion while the other prevents rearward motion, there is no motivation whatsoever to combine the teachings of these two references to arrive at the claimed invention. The Patent Office has clearly and impermissibly relied on hindsight in identifying several tangentially related references that include features somewhat similar to the claimed invention. Furthermore, because claims 2 and 7 (note: claims 3 and 8 have been canceled), depend from amended claim 1, which includes limitations not found in Romo et al., Newman, or Betts, the Applicant asserts that these references do not teach or suggest all of the claim limitations. Thus, the Applicant asserts that claims 2 and 7 are not obvious under 35 U.S.C. § 103(a) and that these claims define patentably over the prior art.

Conclusion

For the reasons set forth herein, this application is believed to be in condition for allowance as the claims are believed to define patentably over the cited patents. Favorable consideration of this application is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Courtney J. Miller". The signature is written in a cursive, flowing style with a large initial 'C'.

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Courtney J. Miller
Reg. No. 45,366
(614) 621-7015
(614) 621-0010 (fax)
cmiller@calfee.com

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